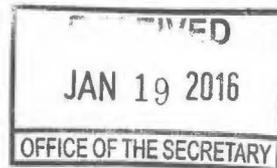


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE
PROCEEDING File No. 3-16978

In the Matter of

Behruz Afshar, Shahryar Afshar,
Richard F. Kenny, IV, Fineline Trading
Group LLC, and Makino Capital LLC,

Respondents.

RESPONDENTS' RESPONSE TO
ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND- DESIST PROCEEDINGS

Behruz Afshar, Shahryar Afshar, Fineline Trading Group, LLC and Makino Capital, LLC (the "Afshar Respondents"), by their attorneys, Vanasco Genelly & Miller, file their Response to the Division of Enforcement's allegations contained in the Order Instituting Proceedings ("OIP") as follows:

1. This case involves the perpetration of two fraudulent trading schemes by Behruz Afshar ("Behruz") and his twin brother, Shahryar Afshar ("Shahryar"), and their close friend, Richard F. Kenny, IV ("Kenny"): the mismarking of option orders to obtain "customer priority" and "spoofing" to generate liquidity rebates. The Afshars are sophisticated options traders and former registered representatives. Kenny, during the relevant time period, was a registered representative at Lightspeed Trading, LLC ("Lightspeed"). The Afshars and Kenny conducted the schemes through two Lightspeed accounts in the name of Fineline Trading Group LLC ("Fineline") and Makino Capital LLC ("Makino"), limited liability companies which the Afshars owned.

RESPONSE: Afshar Respondents admit that Behruz and Shahryar are former registered representatives, and admit that Kenny was a former registered representative at Lightspeed. Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 1.

2. The first fraudulent scheme involved the mismarking of option orders to take advantage of the benefits that certain exchanges provide to non-professional, public retail investors. These exchanges, including the Chicago Board Options Exchange, the NYSE AMEX Options, the International Securities Exchange, and Nasdaq OMX PHLX ("PHLX"), require option orders from the accounts of public customers (not broker-dealers or market-makers) to be marked as either "customer" or "professional."

RESPONSE: Afshar Respondents admit that the exchanges listed in Paragraph 2 require option orders to be marked as either “customer” or “professional.” Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 2.

3. Orders marked “customer” have priority of execution over, and earn higher rebates and incur lower fees than, orders marked “professional” at the same price. A non-broker-dealer person or entity that places more than 390 orders in listed options per day (on average)—whether executed or not—on any listed options exchange during any calendar month in a quarter will be designated as a “professional” for the next quarter. Conversely, a “customer” is a non-broker-dealer person or entity that does not exceed the 390-order threshold for each calendar month in a quarter.

RESPONSE: Afshar Respondents admit that a non-broker-dealer person or entity that places more than 390 orders in listed options per day – whether executed or not – on certain exchanges during any calendar month in a quarter will be designated a “professional” for the next quarter. Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 3.

4. Despite far exceeding the 390-order threshold for every quarter from October 2010 to December 2012, the Respondents were able to continually place “customer”-marked orders throughout this time period by shifting their trading operations on a quarterly basis between the accounts of Finline and Makino. When Finline was designated as “professional” for an upcoming quarter, the Afshars’ trading operations transitioned that quarter to Makino’s account (designated as “customer”), essentially ceasing activity in Finline’s account. Finline’s inactivity would ensure that its account fell below the 390-order threshold, thereby achieving “customer” status for the next quarter, and thus enabling the trading to continue with the benefits of “customer” designation for that subsequent quarter (while trading in Makino essentially ceased).

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 4.

5. The Afshars and Kenny accomplished this back-and-forth scheme through false representations to Lightspeed that Behruz solely owned Finline and that Shahryar solely owned Makino, when in fact Behruz had an ownership interest in both companies. Kenny facilitated the movement of funds and trading operations between the accounts. He also traded in the Afshars’ accounts, received a portion of their trading gains, and shared his commissions with the Afshars.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 5.

6. By placing orders improperly marked as “customer,” the Respondents deceived several exchanges—reaping over \$2 million in transaction fees wrongly avoided and higher rebates wrongly received—and unfairly disadvantaged other market participants with orders that received execution priority.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 6.

7. The second fraudulent scheme involved manipulative trading known as “spoofing” to collect rebates from the PHLX. During the relevant time period, the PHLX employed a “maker-taker” fee model that offered rebates for orders that provided—or “made”—liquidity (i.e., orders that are posted to the exchange’s order book before executing against a subsequent incoming order) and charged fees for orders that “took” liquidity (i.e., orders that execute immediately against previously-received, liquidity-providing orders).

RESPONSE: Afshar Respondents admit that the PHLX employed a “maker-taker” fee model that offered rebates for orders that provided or “made” liquidity and charged fees for orders that “took” liquidity. Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 7.

8. Between May 2011 and December 2012, the Respondents placed All-Or-None (“AON”) orders—undisplayed orders that must be executed in their entirety or not at all—in options on the PHLX to generate liquidity rebates. The Respondents then placed smaller orders in the same option series and price as the larger AON orders, but on the opposite side of the market. These small-lot orders, which were displayed, were not bona fide orders because they were not intended to be executed. Instead, they were placed to alter the option’s best bid or offer (“BBO”) in order to induce, or “spoof,” other market participants into submitting orders at the new BBO, which would then execute against the AON orders. Upon execution of those AON orders, any open displayed orders placed by the Respondents were cancelled.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 8.

9. Because the executed AON orders existed prior to the entry of the other market participants’ orders, they were deemed to have added liquidity and, thereby, generated rebates. In contrast, the other market participants, tricked into trading against the AON orders, were assessed a “take” fee. As a result of this manipulative trading scheme, the Afshars reaped over \$225,000 in ill-gotten rebates.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 9.

10. **Behruz Afshar**, age 44, of Chicago, IL, worked at Terra Nova Financial, LLC (“Terra Nova”), a registered broker-dealer, from February 1997 to August 2007. While at Terra Nova, Behruz was the firm’s head trader, managing and supervising all trading operations of the broker-dealer. Behruz was also associated with another registered broker-dealer from October 2009 to December 2011. In March 2008, Behruz started his own trading company, Fineline, which began trading through a master sub-account at Terra Nova. During the relevant time period, Fineline traded through a master sub-account at Lightspeed. Behruz employed traders on an independent contracting basis to trade in Fineline’s sub-accounts. Behruz held Series 3, 4, 7, 24, 53, 55, and 63 licenses.

RESPONSE: Afshar Respondents deny that Behruz was Terra Nova’s head trader and deny that he was associated with another registered broker-dealer. Afshar Respondents admit the remaining allegations of Paragraph 10.

11. **Shahryar Afshar**, age 44, of Chicago, IL, is the twin brother of Behruz and was a registered representative with Terra Nova from 1998 to 1999, and from March 2005 to October 2005, and with various other broker-dealers from 2000 to 2004. In December 2010, together with Behruz and Kenny, Shahryar formed and took an ownership interest in Makino, which traded through a master sub-account at Lightspeed. Makino utilized the same independent contracting traders as Fineline to trade in its sub-accounts. Shahryar held Series 3, 7, 55, and 63 licenses.

RESPONSE: Afshar Respondents admit the first sentence of Paragraph 11 and deny each and every remaining allegation of Paragraph 11.

12. **Richard F. Kenny, IV**, age 45, of Chicago, IL, was a registered representative at Terra Nova from 1996 to 1998 and from January 2005 until October 2010, when he became a registered representative at Lightspeed as a result of Lightspeed's acquisition of Terra Nova. Kenny held Series 3, 7, 24, 55, and 63 licenses. Kenny resigned from Lightspeed in December 2013, due to his refusal to formally attest that he was not sharing his commissions with any customers or non-registered individuals. On October 2014, FINRA filed a complaint against Kenny for repeatedly refusing to respond to informational requests in connection with its investigation of the Afshars' trading activity. In June 2015, FINRA issued a decision against Kenny for his failure to provide information and documents that would have identified the Afshars and bank accounts in their names or under their control. FINRA's decision, which became final in July 2015, barred Kenny from association with any FINRA member firm and ordered him to pay costs.

RESPONSE: The allegations of Paragraph 12 are not directed at the Afshar Respondents. To the extent a response is required, Afshar Respondents have insufficient knowledge as to the allegations of Paragraph 12 and, therefore, neither admit nor deny same.

13. **Fineline Trading Group LLC** is a Nevada limited liability company that Behruz formed in December 2007. Fineline is a trading company through which Behruz, during the relevant time period, employed up to four independent contracting traders to trade in its sub-accounts. Behruz and Kenny also traded in Fineline's sub-accounts. Behruz controlled and handled all of Fineline's trading operations, risk management, and accounting.

RESPONSE: Afshar Respondents admit that Fineline was formed by Behruz and that Behruz and Kenny traded in Fineline's sub-accounts. Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 13.

14. **Makino Capital LLC** is a Nevada limited liability company that Shahryar, Behruz, and Kenny formed in December 2010. Makino utilized the same independent contracting traders as Fineline to trade in its master sub-account. Shahryar, Behruz, and Kenny also traded in Makino's sub-accounts. Behruz controlled and handled all trading operations, risk management, and accounting for Makino.

RESPONSE: Afshar Respondents admit that Shahryar, Behruz and Kenny traded in Makino's sub-accounts. Otherwise Afshar Respondents deny each and every remaining allegation of Paragraph 14.

15. **Lightspeed Trading LLC** is a New York limited liability company that was formed in 1998. Lightspeed is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. Lightspeed's principal place of business is in New York, New York; the firm also has a branch office in Chicago. Lightspeed, which acquired Terra Nova in 2010, is a member of FINRA and various exchanges.

RESPONSE: Afshar Respondents have insufficient knowledge as to the allegations of Paragraph 15 and, therefore, neither admit nor deny same.

16. **Third Rail Management, Inc. ("Third Rail")** is a Nevada S corporation that Kenny formed in 2008. During the relevant time period, among other things, Third Rail's bank account facilitated monetary transfers between the checking accounts of Fineline and Makino.

RESPONSE: The allegations of Paragraph 16 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny each and every allegation. The Afshar Respondents admit that Kenny formed Third Rail Management, Inc.

17. The Afshar brothers and Kenny are close friends. They attended the same middle school and college, and had overlapping tenures at Terra Nova where Behruz was director of the firm's trading operations, and where Kenny and Shahryar were registered representatives.

RESPONSE: Afshar Respondents admit the allegations of Paragraph 17.

18. In October 2010, Kenny became a registered representative at Lightspeed as a result of Lightspeed's acquisition of Terra Nova. Kenny, although a registered representative with Lightspeed, was considered an independent contractor or "external broker" of the firm.

RESPONSE: The allegations of Paragraph 18 are not directed to the Afshar Respondents. To the extent a response is required, Afshar Respondents have insufficient knowledge as to the allegations of Paragraph 18 and, therefore, neither admit nor deny same.

19. Kenny brought with him to Lightspeed some of the customer accounts he personally serviced while at Terra Nova, including his two largest customers, Behruz and Shahryar and their accounts, most notably, Fineline.

RESPONSE: The allegations of Paragraph 19 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny each and every allegation of Paragraph 19.

20. During his tenure at Lightspeed, Kenny, as an “external broker,” was not required to work at the firm’s registered office in Chicago, but operated alongside Behruz at a trading desk they leased on one of the floors of the Chicago Stock Exchange, Inc. Shahryar traded from his home or at one of the terminals at his brother’s and Kenny’s rented trading desk.

RESPONSE: Afshar Respondents admit the allegations of Paragraph 20.

21. Kenny helped Behruz form Fineline and Makino by filing the formation documents with the state of Nevada and serving as Fineline’s resident agent. Kenny was also Fineline’s registered representative at Terra Nova (and later at Lightspeed) and Makino’s registered representative at Lightspeed, earning commissions on trades in their accounts. Kenny, along with Behruz, was also a signer on the companies’ checking accounts and a named cardholder of Fineline’s business credit card. Kenny also invested in Makino, together with the Afshars.

RESPONSE: Afshar Respondents admit the allegations of the second to last sentence of Paragraph 21 but deny each and every remaining allegation of Paragraph 21.

22. During the relevant time period, Fineline and Makino employed at least four traders on an independent contracting basis to trade in the companies’ sub-accounts, using trading capital provided by the Afshars.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 22.

23. Generally, a master sub-account is an account at a broker-dealer where a top-level customer, in most instances a limited liability company or limited liability partnership, is allowed to have subordinate accounts for different trading activities. These subordinate, or sub-, accounts are then typically used by individual traders or groups of traders.

RESPONSE: Afshar Respondents admit the allegations of Paragraph 23.

24. Three of the independent contracting traders of Fineline and Makino traded in the same office space in San Francisco, and the other trader was a friend of the Afshars who traded primarily alongside Behruz and Kenny at their trading desk.

RESPONSE: Afshar Respondents admit that three contracting traders of Fineline and Makino traded in the same office space in San Francisco and deny each and every remaining allegation of Paragraph 24.

25. The master sub-account arrangement with portfolio margining afforded the traders increased “buying power” and leverage as each trader could trade on margin against the value of the entire Fineline or Makino master account. The traders agreed to split their respective net gains with the Afshars on a 50-50 basis.

RESPONSE: Afshar Respondents admit the master sub-account arrangement with portfolio margining afforded the traders increased buying power and leverage as each

trader could trade on margin against the value of the entire Fineline or Makino master account, as the case may be, but deny each and every remaining allegation of Paragraph 25.

26. Behruz oversaw all of the activity of the sub-account traders of Fineline and Makino on a real-time basis, kept track of their order counts, provided operational, risk-management, and technological support, as well as access to trading software to place and route orders to specific exchanges. Behruz also controlled and handled the traders' capital and managed all accounting, including determining the sub-account traders' payouts and expense reimbursements, and ensuring that the companies' trading profits (after compensating the sub-account traders) were split three ways—among himself, Shahryar, and Kenny.

RESPONSE: Afshar Respondents admit that Behruz oversaw activity of the sub-account traders of Fineline and Makino on a real-time basis, kept track of their order counts, managed all accounting, payouts and expense reimbursements, provided risk-management and technology support but deny each and every remaining allegation of Paragraph 26.

27. Behruz and Kenny also kept track of, on a monthly basis, the exchanges' maker-taker pricing models and fee schedules and informed the sub-account traders of any changes.

RESPONSE: Afshar Respondents admit the allegations of Paragraph 27.

28. From October 2010 to December 2013, Kenny earned approximately \$2 million in commissions, of which over \$1.5 million was earned from the Afshars' accounts. Kenny shared those commissions with the Afshars and personally traded in the sub-accounts of both Fineline and Makino. This conduct, which Kenny failed to disclose to Lightspeed, violated the broker-dealer's written supervisory procedures.

RESPONSE: To the extent a response is required, the Afshar Respondents deny each and every allegation of Paragraph 28.

29. A "professional order" is defined as an order for the account of a person or entity that: (1) is not a broker or dealer in securities; and (2) places more than 390 orders in listed options per day – whether executed or not – on any listed options exchange on average during any calendar month of a quarter for its own beneficial account(s) ("390-order threshold"). Three hundred ninety orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close.

RESPONSE: Afshar Respondents state that exchange rules speak for themselves, but to the extent the allegations differ from the rule, Afshar Respondents deny such allegations.

30. A "customer priority" order is defined as an order for the account of a non-broker-dealer person or entity that falls below the 390-order threshold for each calendar month in a quarter.

RESPONSE: Afshar Respondents state that exchange rules speak for themselves, but to the extent the allegations differ from the rule, Afshar Respondents deny such allegations.

31. All orders for multiple accounts beneficially owned or controlled by the same person or entity, and all sub-accounts of a person or entity's master account, must be aggregated when determining whether the 390-order threshold has been exceeded by that person or entity.

RESPONSE: Afshar Respondents state that exchange rules speak for themselves, but to the extent the allegations differ from the rule, Afshar Respondents deny such allegations.

32. A "customer priority" order is given priority of trade execution over "professional" and broker-dealer orders at the same price and, with few exceptions, does not incur any transaction fees and receives higher rebates (or pays lower fees) for adding (or removing) liquidity. Options exchanges provide these benefits to customer priority orders to attract retail order flow and level the playing field for retail investors over market professionals.

RESPONSE: Afshar Respondents state that exchange rules speak for themselves, but to the extent the allegations differ from the rule, Afshar Respondents deny such allegations.

33. Lightspeed coded orders as "customer" or "professional" based on a quarterly counting of its customers' orders. Orders from accounts with the same beneficial ownership (including all sub-accounts under a master account) were aggregated and totaled on a per-month basis to determine whether an account exceeded the 390-order threshold. Because trading activity was reviewed quarterly to determine whether orders for an account should be represented as "professional" or "customer," a professional account one quarter can become a customer account next quarter, and vice versa, depending on the previous quarter's order count.

RESPONSE: Afshar Respondents have insufficient knowledge to respond to the allegations of Paragraph 33 and therefore neither admit nor deny such allegations.

34. From at least December 2010 to December 2012, the Afshars and Kenny perpetrated a scheme to fraudulently maintain "customer"-designation of all the orders from the Afshars' accounts without interruption despite their order counts at Lightspeed far exceeding the 390-order threshold for every month during that time period.

RESPONSE: Afshar Respondents deny any scheme existed and deny each and every allegation of Paragraph 34.

35. The scheme was accomplished by having the trading operations at Lightspeed alternate between the Fineline and Makino accounts each quarter, depending on which account was "customer"-designated, with the other "professional" account conducting little to no activity.

RESPONSE: Afshar Respondents deny any scheme existed and deny each and every allegation of Paragraph 35.

36. Both Kenny and Behruz knew Lightspeed's quarterly review procedures which required the aggregation of orders for all beneficially owned accounts (and their sub-accounts, if any existed). Kenny also read industry guidance regarding the requirement to aggregate orders and the exchanges' prohibition on avoiding the "professional" designation by spreading trading activity over multiple accounts.

RESPONSE: Afshar Respondents deny the first sentence of Paragraph 36 and have insufficient knowledge as to the remaining allegations and therefore neither admit nor deny same.

37. Typically, at the end of each quarter, Kenny or Behruz sought confirmation from Lightspeed that either the Finline or Makino account would be designated as "professional" and that the other account would "come off pro" and revert back to "customer."

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 37.

38. After receiving confirmation from Lightspeed that the mostly dormant "professional" account would return to "customer" status at the start of the next quarter, Behruz alerted the sub-account traders of their upcoming transition to a new account and required them to wind down any open positions. Kenny ensured that the sub-account traders had trading authority and proper access credentials to seamlessly move between accounts. He also assisted the Afshars in transferring sufficient trading capital between the two master sub-accounts to enable the trading operations to continue without interruption.

RESPONSE: The second sentence of Paragraph 38 is not directed to the Afshar Respondents. Afshar Respondents deny each and every remaining allegation of Paragraph 38.

39. To avoid account aggregation, the Afshars and Kenny misrepresented to Lightspeed that Finline and Makino did not share common ownership, representing that Behruz was the sole beneficial owner of the former, and Shahryar was the sole beneficial owner of the latter.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 39.

40. In fact, Behruz had a beneficial interest in both Finline and Makino. Finline's account opening documents, signed by Behruz and submitted to Lightspeed, listed Behruz as the only individual with a beneficial interest in the company. Finline's incorporation documents also reflect that Behruz was the sole managing member of the company during the relevant time period.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 40.

41. For Makino, according to an email from Shahryar to Behruz and Kenny in June 2011, Behruz initially invested \$27,500 in the company. At the time, this was at least a third of the total amount invested in Makino.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 41.

42. Had Lightspeed known that Behruz in fact controlled and managed both companies' accounts and had a beneficial interest in Makino, or that both companies' trading profits (after paying the sub-account traders) were divided among the Afshars and Kenny, the accounts of Fineline and Makino would have been marked "professional" for every quarter during the relevant time period.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 42.

43. The scheme took shape in December 2010, when Behruz and Kenny, fully aware of the aggregation requirements of orders from beneficially owned accounts, explored ways to ensure that Fineline's trading continued in a "customer"-marked account for the first quarter of 2011. Behruz and Kenny initially sought to open a new master sub-account at another broker-dealer. In mid-December 2010, Behruz forwarded to one of the sub-account traders an email from the other broker-dealer about the availability of a new master sub-account for trading by January 3, 2011, stating, "[b]elow is an email from my guy at the other BD we plan on trading soon.... In case you were wondering, we plan on having accounts open at multiple firms under different names so we can keep trading :)."

RESPONSE: Afshar Respondents deny any scheme existed and deny each and every remaining allegation of Paragraph 43.

44. The idea of opening an account at the other broker-dealer was abandoned when Lightspeed's compliance department refused to approve Kenny's dual association with the other broker-dealer.

RESPONSE: Afshar Respondents deny the allegations of Paragraph 44.

45. Behruz, Kenny, and Shahryar ultimately decided to form a new entity, Makino, named after a sushi restaurant in Las Vegas, Nevada that Shahryar frequented, open a master sub-account in its name at Lightspeed, and then make it appear that Makino was not beneficially owned by Fineline and/or Behruz. As Behruz explained to a sub-account trader via instant message:

Behruz: i'm always about the money, the problem that we face is Monday [January 3, 2011] we are Prof[essional]...that doesn't change

Behruz: I was ready to have a customer account for [sic] to trade in as of last week, but some powers that may be came in and put some strain on that account so we had to go another route which will still accomplish our goal....

Behruz: you should see all the s*** we're doing here...too funny

Sub-Account Trader: costume party? what do youmean?

Behruz: opening bank accounts, trading accounts, etc ...

Behruz: i think we have about 10 llc here all tied to sushi names

Sub-Account Trader: LOL

Sub-Account Trader: you and your fish man

Sub-Account Trader: too funny

Behruz: i'm not even the one that came up with these damn names

Sub-Account Trader: haha who made em up

Behruz: my bro and rich

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 45.

46. Kenny filed paperwork with the state of Nevada to form Makino on December 20, 2010. Those formation documents included Shahryar as the only principal of the company despite the fact that Behruz and Kenny also had a beneficial interest in the company—all three each initially invested \$27,500. One week later, Kenny completed and submitted an application to Lightspeed for a new master sub-account for Makino. That application, signed by Shahryar, falsely stated that Shahryar was the sole beneficial owner of Makino.

RESPONSE: Afshar Respondents admit the first sentence of Paragraph 46 and deny each and every remaining allegation of Paragraph 46.

47. Once Makino's master sub-account was approved by Lightspeed in mid-January 2011, Fineline's trading, with Behruz managing the operations and Kenny serving as the registered representative (and an unofficial sub-account trader), was able to continue as a "customer"—for the first quarter of 2011 in the new Makino account—and for all subsequent quarters in the relevant time period as those operations seamlessly alternated between the two accounts.

RESPONSE: Afshar Respondents admit Kenny served as registered representative but deny each and every remaining allegation of Paragraph 47.

48. By the fourth quarter of 2012, Behruz became frustrated with aggregating the sub-account traders' orders for purposes of determining the 390-order threshold, and confided in a former colleague from Terra Nova that it was time to "kill the whole idea of having these master sub setups and having individual traders being just backed and they have to monitor their order counts. That way we don't – they don't have to f***in' bounce around" between Fineline and Makino.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 48.

49. As a result, starting in January 2013, the Respondents' plan was for each sub-account trader to establish their own LLC, open an account at Lightspeed in the name of that LLC in which to trade, and have Fineline "operate as we always have, but more as a lender of capital," controller of all the "money flow," and recipient of a split of the traders' respective net gains. "The idea," as Behruz wrote, "[was] to function in a capacity where [Fineline] will not have beneficial ownership but will still be able to provide traders with the same service" and

with trading capital. Moreover, each trader had to “adhere to the 390 rule or else run the risk of being coded pro-customer.”

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 49.

50. The Respondents placed the following number of orders in the fourth quarter of 2011:

Month	Account Name	Account Designation	Aggregate	Daily
October	Fineline Trading Group	Customer	91,250	4,345
	Makino Capital LLC	Professional	78	4
November	Fineline Trading Group	Customer	76,916	3,663
	Makino Capital LLC	Professional	2	0.10
December	Fineline Trading Group	Customer	80,134	3,816
	Makino Capital LLC	Professional	0	0

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 50.

51. In anticipation of Fineline becoming designated as “professional” for the first quarter of 2012 based on the order counts above, Kenny began the process of re-activating the Makino sub-accounts in late December 2011.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 51.

52. On December 27, 2011, Kenny emailed a representative in Lightspeed’s accounts department requesting log-in credentials for the Makino sub-accounts. In his email, Kenny falsely represented that only Shahryar would be trading in each of the sub-accounts and that Shahryar was the only member of Makino, attaching trade authorization forms signed by Shahryar listing only his name for each sub-account. On December 30, 2011, Kenny received the log-in credentials.

RESPONSE: The allegations of Paragraph 52 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny each and every allegation.

53. As part of ensuring a seamless transition of trading operations from Fineline to Makino for the start of the first quarter of 2012, Behruz transferred trading capital from Fineline to Makino through an entity owned by Kenny.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 53.

54. On December 30, 2011, Behruz submitted a wire request to Lightspeed to transfer \$420,000 from Fineline’s brokerage account to its checking account. After receiving those funds, on the same day, Fineline’s checking account transferred \$220,000 to a checking account in the name of Third Rail, an entity Kenny owned and which helped facilitate money transfers between

Fineline and Makino, with the remaining \$200,000 transferred to Makino's checking account (increasing Makino's account balance to over \$400,000).

RESPONSE: Afshar Respondents admit Kenny owned Third Rail but deny each and every remaining allegation of Paragraph 54.

55. On January 3, 2012, Third Rail transferred \$200,000 to Makino's checking account (increasing its account balance to more than \$600,000). Later that day, Makino transferred \$600,000 to its brokerage account at Lightspeed and Kenny emailed the sub-account traders their respective log-in credentials received from Lightspeed's accounts department to begin trading in the Makino sub-accounts.

RESPONSE: Afshar Respondents admit the allegations of Paragraph 55.

56. The next day, January 4, Third Rail's checking account transferred \$250,000 to Makino's checking account, all of which Makino then transferred to its brokerage account at Lightspeed, providing additional trading funds.

RESPONSE: The Afshar Respondents deny that such transfer provided additional trading funds and have insufficient knowledge as to the remaining allegations of Paragraph 56 and, therefore, neither admit nor deny same.

57. Third Rail's involvement in the transfers between Fineline and Makino was intended to avoid raising suspicions that the two companies were affiliated.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 57.

58. The following shows the shifting of trading activity from Fineline's account to Makino's account (now "customer") in the first quarter of 2012:

Month	Account Name	Account Designation	Aggregate	Daily
January	Fineline Trading Group	Professional	438	21
	Makino Capital LLC	Customer	97,122	4,625
February	Fineline Trading Group	Professional	16	0.8
	Makino Capital LLC	Customer	100,187	5,009
March	Fineline Trading Group	Professional	12	0.55
	Makino Capital LLC	Customer	107,232	4,874

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 58.

59. On March 29, 2012, Kenny requested, and received, confirmation from Lightspeed that Fineline's designation would revert back to "customer" at the start of the second quarter based on the order counts above. Later that day, Kenny requested that Lightspeed "expire" the Makino log-in credentials used by the sub-account traders and "enable" four

Fineline log-in credentials, effective Monday, April 2, 2012, the first trading day of the next quarter.

RESPONSE: The allegations of Paragraph 59 are not directed to the Afshar Respondents.

60. As part of transitioning the trading operations from Makino back to Fineline for the start of the second quarter of 2012, Makino transferred trading capital to Fineline. On Friday, March 30, 2012, Makino requested a wire transfer of \$730,000 from its Lightspeed account to its checking account. On April 2, 2012, Makino transferred \$500,000 and \$80,000 to Third Rail's and Fineline's checking accounts, respectively, and Kenny emailed the sub-account traders their new log-in credentials for the re-activated Fineline sub-accounts. On April 4, 2012, Third Rail transferred \$300,000 to Fineline's checking account. Several days later, on April 9, 2012, Fineline transferred \$400,000 to its Lightspeed account providing additional trading funds.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 60.

61. The "customer priority" scheme was intended to deceive, and did deceive, the exchanges which required option orders from public customers to be designated as either "customer" or "professional." On the basis of that order designation, the exchanges determined which orders received priority of execution and the amounts of all related transaction credits and debits, including liquidity rebates, "take" fees, transaction costs, and cancellation fees. Lightspeed passed on the full amount of these credits and debits from the exchanges to the corresponding customers that placed the orders.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 61.

62. As a result, the customer-priority scheme netted the Afshars' accounts over \$2 million in exchange fees avoided and additional rebates earned from the exchanges.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 62.

63. In addition, the scheme unfairly disadvantaged other professional market participants over whom the Respondents' "customer" orders would have wrongly received priority of execution for orders at the same price. Put another way, professional public customers placing orders at the same price as Respondents' orders would have been harmed by the Respondents' advantageous position of execution priority through the customer-priority scheme.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 63.

64. The Respondents' trading operations and the volume and frequency of their orders in no way resembled those of a non-professional, retail customer. The Respondents undermined the purpose of the "professional"-order type, which was to level the playing field between public customers and professional traders, by wrongly claiming for themselves the benefits exchanges only offered to non-professional, public customers.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 64.

65. Between May 2011 and December 2012, the Respondents engaged in “spoofing” to generate rebates from the PHLX, which was a maker-taker exchange at the time. In general, spoofing describes a trader’s use of “non-bona fide” orders (i.e., orders that the trader does not intend to have executed) in a security on one side of the market, which affect the price and/or volume of that security, for the purpose of inducing other market participants to execute against the trader’s orders in the same security but on the opposite side of the market. The spoofing employed by the Respondents focused on options in symbols that were eligible for rebates on the PHLX.

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 65.

66. The Respondents, or the sub-account traders under the Respondents’ direction and/or supervision, entered a series of nondisplayed AON orders to buy (or sell) options on the PHLX in these symbols at a price that was a penny more (or less) than the option’s current best bid (or offer). AON orders are undisplayed orders to buy or sell securities that must be executed in their entirety, or not executed at all. AON orders continue to remain active (and hidden) until they are executed or cancelled. Because AON orders are undisplayed, their prices do not affect the national best bid or offer (“NBBO”).

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 66.

67. The Respondents, or the sub-account traders under the Respondents’ direction and/or supervision, then placed smaller, non-bona fide sell (or buy) orders—typically, for one contract (“a one-lot”)—on the PHLX (or a different exchange) at the same price as the AON orders, but on the opposite side of the market (the “small-lot orders”). Because the size of the small-lot orders was less than the AON orders, those orders did not execute against each other. The small-lot orders, which were displayed, were placed for the purpose of lowering (or raising) the option’s best offer (or bid) by one penny in order to induce other market participants to send orders on the same side at that price level. Once other market participants joined the small-lot order with sufficient quantity, their orders executed against the AON orders. After the AON orders were filled, any open, non-bona fide, small-lot order was cancelled. Typically, the strategy was repeated on the opposite side of the market to close out the position.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 67.

68. Because the AON orders were posted to the PHLX’s order book before executing against subsequently received orders, the PHLX credited them with having provided liquidity and paid rebates that Lightspeed passed on to the Afshars’ accounts. Conversely, the orders from the other market participants, who were “spoofed” into executing against the pre-existing AON orders, were considered to have removed liquidity and charged a “take” fee by the PHLX.

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 68.

69. Once the PHLX removed their maker-taker pricing schedule for “customer”-marked orders effective January 2013, the AON spoofing scheme came to an end, or as Behruz summed it up, “bye bye AON fun.” As a result of this scheme, the Afshars’ accounts generated over \$225,000 in rebates from the PHLX.

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 69.

70. The use of small-lot orders to spoof other market participants into executing against the non-displayed AON orders was described by Behruz as the “hidden X-A,” referring to the coding of orders that earned rebates from the PHLX (“X” for PHLX and “A” for adding liquidity) and described by Kenny as “bringing in the offer” (to fill AON buy orders) or “bringing in the bid” (to fill AON sell orders), as reflected in instant messages:

Behruz: i love getting ‘em with the hidden x-a anyhow . . . bring me such pleasure and joy . . . at times I roll over laughing
Sub-Account Trader: haha
Sub-Account Trader: yes
Sub-Account Trader: it’s a nice feeling
Sub-Account Trader: I love it when I use nasd [to place the small-lot order] to bring the bid/offer in and then get em

Sub-Account Trader: did you see the [Microsoft trade] [last] month?
Sub-Account Trader: yday
Sub-Account Trader: no liquidity
Kenny: i didn’t...you get some?
Sub-Account Trader: but i offered em on phlx aon and brought the bid in on phlc [sic]
Sub-Account Trader: i LOVE doin that lol ... Kenny: that is the finest... bringing in the bid or offer Kenny: makes you feel proactive!
Sub-Account Trader: makes me feel like i was smarter than the computer haha
Kenny: true dat

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 70.

71. On October 15, 2012, between 9:52:50 and 9:52:54, Kenny himself placed twelve AON orders, each to sell ten call option contracts of Ford, with November 2012 expiration and a strike price of \$11.00, for \$.08 on the PHLX (for a total of 120 contracts).

- At the time, the inside bid for this option series was \$.07 and the inside offer was \$0.09 and the bid size was over 2,400 contracts.

- The AON orders did not change the national best offer because they were not displayed to other market participants.
- Kenny placed the AON orders in one of the sub-accounts of Fineline, which was designated “customer” because its activity in the prior quarter fell below the 390-order threshold.

RESPONSE: The allegations of Paragraph 71 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny the allegations of Paragraph 71.

72. At 9:52:56, Kenny placed a one-lot order to purchase the same call option series in Ford for \$0.08 on the PHLX from one of the sub-accounts of Makino, which at the time was designated “professional,” presumably to avoid raising any suspicions of a wash trade and to decrease the likelihood of an execution (due to the lower priority of “professional” orders).

- The one-lot order raised the national best bid from \$0.07 to \$0.08—narrowing the NBBO spread from two cents (\$0.07 x \$0.09) to one cent (\$0.08 x \$0.09). At that one-cent spread, the bid size was only one contract—reflecting the one-lot order.
- That order was guaranteed not to execute against the AON orders because the quantity of the AON orders exceeded the one-lot.
- At 9:52:59, Kenny cancelled the one-lot order, which lowered the national best bid back to \$0.07 (at which price the bid size was more than 2,300 contracts).

RESPONSE: The allegations of Paragraph 72 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny the allegations of Paragraph 72.

73. At 9:56:01, Kenny placed another one-lot buy order at \$0.08 in the same call option series.

- The one-lot order increased the best bid to \$0.08 (at which price the bid size was again one contract).
- At 9:56:03, Kenny placed six more AON sell orders in the same call option series at \$0.08 (increasing the AON sell orders to 180 total contracts).
- Between 9:56:03 and 9:56:43, other market participants submitted buy orders at \$0.08 in sufficient quantities to completely fill all eighteen AON orders.
- At 9:56:43, all eighteen AON orders were executed, resulting in \$46.80 in liquidity rebates for the Fineline account (\$0.26 per contract).
- At 9:56:45, Kenny cancelled the open one-lot order, dropping the best bid back to \$0.07.

RESPONSE: The allegations of Paragraph 73 are not directed to the Afshar Respondents. To the extent a response is required, the Afshar Respondents deny the allegations of Paragraph 73.

74. Behruz developed the scheme, sometimes referred to as “AON-ing,” or simply “AON,” after he observed non-marketable orders from the Afshars’ accounts—which he believed were eligible for rebates upon their execution—executed immediately and were charged a “take” fee for removing liquidity. After learning that the orders executed against hidden orders, Behruz began testing AON orders on the PHLX.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 74.

75. Behruz later learned that “customer”-marked AON orders were not assessed cancellation fees by the PHLX (unlike “professional” AON orders). This made the spoofing strategy economically viable because the Afshars’ accounts could post AON orders and cancel them without penalty if they were not filled. As a result, in early May 2011, Behruz introduced the AON strategy to Kenny and the sub-account traders.

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 75.

76. On some occasions, Behruz and Kenny placed small-lot orders on the PHLX to assist the sub-account traders in filling their AON orders, typically using a different sub-account (or the account designated as “professional” at the time). Kenny told one of the sub-account traders that “as far as AON goes, [Behruz] and i love to help. i love to positions [sic] get closed.”

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 76.

77. At times, the sub-account traders requested this assistance and other times, Behruz and Kenny proactively offered it. For example, Kenny wrote one sub-account trader: “that you AONing in MSFT? i’m gonna prop it up and get u filled” and, on another occasion, wrote: “lemme help you out. load up your aons.” Similarly, Behruz corresponded with a trader:

Behruz: ... I’d rather do the phlx aon on that and bring the offer in

Sub-Account Trader: ok . . .

Sub-Account Trader: 10 50 lots?

Behruz: yes

Sub-Account Trader: ok done

Behruz: when you’re done we’ll cancel the 1 lot

Behruz: that’s my offer

Sub-Account Trader: k

Behruz: come here kitty kitty

Behruz: they are afraid :)

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 77.

78. Market participants were deceived when they interpreted the small-lot orders as reflecting genuine demand or supply and joined those orders with hopes of offering liquidity and earning rebates. Instead, their orders often executed against the hidden AON orders and resulted

in “take” fees. These market participants were deceived into executing against AON orders placed from the Afshars’ accounts at prices that had been artificially raised (or lowered) by those same accounts.

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 78.

79. In fact, one market participant alerted the PHLX about being deceived by such trading. On October 31, 2012, a trader at a registered broker-dealer, market-maker, and proprietary trading firm, notified her supervisor, the head of the firm’s U.S. options market making (“Head Trader #1”), that “[t]oday we saw in GE us remove large size on PHLX using quotes. We join a 1-lot bid and end up removing liquidity via 10-lot trades (the 1-lot remains). Last time we saw this behavior the exchange verified that we had crossed with an ALL-or-NONE order. I am curious if it is the same case here and if the counterparty we execute against is the same firm that has a 1-lot bid in the depth.”

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 79.

80. Unbeknownst to the firm, on October 31, 2012, from 12:29:31 to 12:29:43, Kenny, in one of Finline’s sub-accounts, placed twenty-four AON orders on the PHLX, each to sell ten contracts of GE (with November 2012 expiration and strike price of \$22.00) for \$0.07 (for a total of 240 contracts). At the time, the inside bid for this option was \$0.06 (with a size of 1,897 contracts) and the inside ask was \$0.08 (at 5,291 contracts). At 12:29:47, Kenny, from one of Makino’s sub-accounts, placed a one-lot order on the PHLX to buy the same option at \$0.07. That one-lot order raised the inside bid from \$0.06 to \$0.07 (with a bid size of one contract).

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 80.

81. In response to that price movement, at 12:34:38, the firm’s trading algorithm joined the one-lot order with an order to buy 130 contracts of the November 2012 GE option at \$0.07 to provide liquidity at the new bid and potentially earn rebates. However, rather than providing liquidity, the firm’s order immediately executed in full against thirteen of the preexisting twenty-four AON orders placed by Kenny. The firm’s order thus removed liquidity and was charged a “take” fee by the PHLX. At 12:36:36, Kenny cancelled the one-lot order, moving the inside bid back to \$0.06 (with a size of 602 contracts).

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 81.

82. Several hours later, after being informed of these findings, Head Trader #1 emailed individuals at the PHLX about his concerns: “[W]e have encountered some strange trading behavior recently on PHLX. It appears like we are trading against hidden AON orders, and we believe that someone might be manipulating the market. Here is one example from today that we found in GE, all timestamps are CST. Before the trades happened the PHLX BBO was

.07 bid at .08. The volume on the .07 bid was 1 contract. We tried to join the .07 bid for a size of 130 contracts, and we immediately traded 13 times, each trade was for 10 contracts. We are particularly concerned that a market participant is entering an order to buy 1 contract at .07 (not AON), and then they are layering many orders to sell at .07 using an AON contingency.”

RESPONSE: Afshar Respondents deny they engaged in “spoofing” and deny each and every allegation of Paragraph 82.

83. As a result of the conduct described above, Behruz and Kenny willfully violated, and Shahryar, Fineline, and Makino violated, Sections 17(a)(1) and 17(a)(2) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 83.

84. As a result of the conduct described above, alternatively, Behruz willfully aided and abetted and caused Shahryar’s, Fineline’s, and Makino’s violations of Sections 17(a)(1) and 17(a)(2) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 84.

85. As a result of the conduct described above, alternatively, Kenny willfully aided and abetted and caused Behruz’s, Shahryar’s, Fineline’s, and Makino’s violations of Sections 17(a)(1) and 17(a)(2) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 85.

86. As a result of the conduct described above, alternatively, Shahryar caused Makino’s violations of Sections 17(a)(1) and 17(a)(2) of the Securities Act as well as Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 86.

87. As a result of the conduct described above, alternatively, Behruz, Shahryar, and Kenny acted through or by means of Fineline and Makino, as well as Lightspeed, and as a result, Behruz and Kenny willfully violated, and Shahryar violated, Section 20(b) of the Exchange Act, which prohibits a person, directly or indirectly, from doing any act or thing which it would be unlawful for such person to do under the Exchange Act or any rule or regulation thereunder, through or by means of any other person, and Section 10(b) of the Exchange Act and Rules 10b-5(a), 10b-5(b), and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 87.

88. As a result of the conduct described above, Behruz and Kenny willfully violated, and Shahryar, Fineline, and Makino violated, Sections 17(a)(1) and 17(a)(3) of the Securities Act as well as Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 88.

89. As a result of the conduct described above, alternatively, Behruz willfully aided and abetted and caused Shahryar's, Fineline's, and Makino's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act as well as Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 89.

90. As a result of the conduct described above, alternatively, Kenny willfully aided and abetted and caused Behruz's, Shahryar's, Fineline's, and Makino's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act as well as Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 90.

91. As a result of the conduct described above, alternatively, Shahryar caused Makino's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act as well as Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 91.

92. As a result of the conduct described above, alternatively, Behruz, Shahryar, and Kenny acted through or by means of Fineline and Makino, and as a result, Behruz and Kenny willfully violated, and Shahryar violated, Sections 20(b), 9(a)(2), and 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

RESPONSE: Afshar Respondents deny each and every allegation of Paragraph 92.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Behruz and Kenny pursuant to Section 15(b)(6) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Behruz and Kenny pursuant to Section 9(b) of the Investment Company Act; and

D. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, the Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, and Sections 9(a)(2), 10(b), and 20(b) of the Exchange Act and Rule 10b-5 thereunder, and whether the Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

RESPONSE: Afshar Respondents deny that the Commission is entitled to any relief and demand this proceeding be dismissed with prejudice.

AFFIRMATIVE DEFENSES

I.

AFFIRMATIVE DEFENSES RELATING TO THE “CUSTOMER-PRIORITY SCHEME”

First Affirmative Defense

(Rule Not Applicable to Customers)

1. An alleged violation of the 390-order rule cannot support a claim for fraud against the Afshar Respondents when the 390-order rule does not place any affirmative obligation on customers, but instead requires members to mark orders as customer or professional.

Second Affirmative Defense

(No Violation of 390-Order Rule)

2. The Afshar Respondents at no time violated the 390-order rule.

Third Affirmative Defense

(Rule Violation Not Fraudulent)

3. Even if the Commission could somehow show that the Afshar Defendants violated an exchange rule, which it cannot, this alleged violation does not support a claim for securities fraud.

4. The Commission in its OIP conflates an exchange rule violation with fraud, but the Second Circuit has explicitly rejected this reasoning in *U.S. v. Finnerty*, 533 F.3d 143 (2nd Cir. 2008), precedent to which the Commission adhered in subsequent administrative proceedings.

5. The 390-order rule amounted to simply a regulatory change, and accordingly, violation of the rule does not equate to securities fraud.

Fourth Affirmative Defense

(390-Order Rule Not Applicable to Accounts With Differing Ownership)

6. There was no violation of the 390-order rule because there was no common beneficial ownership between Fineline and Makino.

7. The 390-order rule requires members to aggregate accounts with common “beneficial ownership” when counting orders. The trading here was done by independent traders, in different subaccounts, in turn owned by two different master accounts, owned by two different entities (Fineline and Makino), with each such entity having different ultimate ownership. Additionally, the Commission has not shown and cannot show any profit sharing between these entities that might suggest common beneficial ownership.

Fifth Affirmative Defense

(390-Order Rule Impermissibly Vague As Applied)

8. The 390-order rule is impermissibly vague and therefore cannot be used as a basis for imposing liability on the Afshar Defendants.

Sixth Affirmative Defense

(Lack of Notice of New Interpretation of the Rule)

9. There can be no finding of customer liability and no imposition of any sanction based on the novel interpretation of the 390-order rule offered by the Commission when there has been no formal Commission precedent or official guidance that would put customers on notice. *See WHX Corp. v. SEC*, 362 F.3d 854, 860 (D.C. Cir. 2004).

Seventh Affirmative Defense

(Limited Enforcement of Exchange Rules)

10. The Commission has no authority to enforce exchange rules against non-members.

11. Section 8A of the Securities Act and Section 21C of the Securities Exchange Act allow the Commission to institute cease-and-desist administrative proceedings only for violation

of the Acts and Commission rules and regulations thereunder, not for violation of an exchange rule.

12. To the extent Congress has given the Commission any authority to enforce exchange rules, Congress has carefully limited such authority in Section 21(d)(1) to allow civil actions only against exchange members and associated persons, that is, for violation of “the rules of a national securities exchange ... of which such person is a member or a person associated with a member.”

13. Congress has further restricted Commission action in Section 21(f) by providing that the Commission may only enforce the rules of a self-regulatory organization where the organization appears “unable or unwilling to take appropriate action against” the violator of its own rule, or where some other particular circumstance makes such action necessary or appropriate.

Eighth Affirmative Defense
(Duplicative Damage Calculation)

14. The Commission in pursuing disgorgement damages seeks to collect both avoided fees, implying that the trades in question would still have occurred even had the orders been marked professional, as well as assessed commissions, implying that the trades would not have occurred had the orders been marked professional.

15. Calculating damages in such a way is duplicative and at odds with basic tenets of disgorgement damages.

II.

**AFFIRMATIVE DEFENSES RELATING TO THE
“SPOOFING SCHEME”**

Ninth Affirmative Defense
(At-Risk Trading Not Manipulative)

16. The trading allegedly constituting a “spoofing scheme” was not manipulative when the Afshar Defendants properly participated in a sophisticated market and utilized common, well-known trading strategies, such as price discovery, “all-or-none” orders, and fee and rebate analysis. Lawful at-risk orders that can or do result in actual trades do not become manipulative based simply on the fact that the trader is motivated by economic self-interest and pursuing some trading strategy.

Tenth Affirmative Defense
(No Spoofing)

17. Trading by the Afshar Respondents does not constitute manipulative spoofing based on the Commission’s own interpretation of market manipulation rules and regulations.

III.

AFFIRMATIVE DEFENSES RELATING TO ALL CLAIMS

Eleventh Affirmative Defense

(No Scierter)

18. The Afshar Respondents did not act with the requisite scierter to support a securities fraud claim.

Twelfth Affirmative Defense

(Procedural Due Process)

19. Use of the administrative forum for a case of this nature will severely prejudice the Afshar Respondents and deny them due process of law in violation of the Fifth Amendment to the Constitution.

Thirteenth Affirmative Defense

(Executive Power and Appointments)

20. SEC administrative proceedings violate Article II of the Constitution because SEC ALJs have not been appointed by the SEC Commissioners.

Fourteenth Affirmative Defense

(Right to Jury Trial)

21. Where the government seeks a civil penalty, the Supreme Court has held in *Tull v. U.S.*, 481 U.S. 412 (1987), that the Seventh Amendment guarantees the citizen the right to trial by jury.

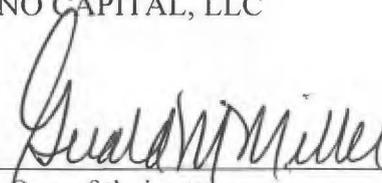
CONCLUSION

The Division's contentions should be rejected and findings should be made against it, no relief should be awarded, and this proceeding should be dismissed with prejudice.

Dated: January 15, 2016.

BEHRUZ AFSHAR, SHAHRYAR AFSHAR,
FINELINE TRADING GROUP, LLC and
MAKINO CAPITAL, LLC

By: _____



One of their attorneys

Gerald M. Miller
Adam S. Goldman
Vanasco Genelly & Miller
33 N. LaSalle Street, Suite 2200
Chicago, Illinois 60602
(312) 786-5100
gmler@vgmlaw.com
agoldman@vgmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Respondents' Response to Order Instituting Administrative and Cease-and-Desist Proceedings was served on the following on this 15th day of January, 2016, via electronic mail as agreed to by all parties.

The Honorable Cameron Elliott
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
alj@sec.gov

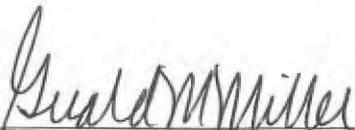
Howard J. Stein, Esq.
30 N. LaSalle Street, Suite 2040
Chicago, Illinois 60602
[REDACTED]

Melissa Armstrong, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
armstrongme@sec.gov

Frederick L. Brock, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
blockf@sec.gov

Paul Kim, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
kimpa@sec.gov

Rami Sibay, Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
sibayr@sec.gov



Gerald M. Miller